

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JETSON R. CHESHER, and  
BOBBIE SHIREMAN, and  
JEFFREY R. CHESHIRE,

Plaintiffs,

v.

CHARLES A GIBSON and KITTIE  
H. GIBSON (Husband and Wife),  
and ROBERT W. GARRETSON and  
MARY H. GARRETSON (Husband  
and Wife), and ROBERT A.  
GARRETTSON, and THEODORE  
MELLOTTE, AND WANDA and/or  
ELOISE MELLOTT (Husband and  
Wife), and LEON BRUMAN and  
MARILYN BRUNAM (Husband and  
wife), and DAVID MARHER Jr., and  
WILLIAM H. GREGORY, and (All  
Section 25 historical-defendants) and  
HALVERSON, APPEGATE, AND  
MCDONALD [Law Firm], and  
FLYING Y HOMES OWNERSHIP  
ASSOCIATION, and STATE OF  
WASHINGTON, et al., and  
DEPARTMENT OF WILDLIFE, and  
YAKIMA COUNTY, et al.,

Defendants.

NO. CV-07-3072-RHW

**ORDER ADDRESSING PENDING  
MOTIONS AND DISMISSING  
CASE**

Before the Court are Defendants' Theodore and Eloise Mellotte's Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1-7) (Ct. Rec. 9); the State Defendant's Fed. R. Civ. P. 12(b)(6) Motion to Dismiss (Ct. Rec. 16); Yakima County Defendants' Joinder in Motion to Dismiss (Ct. Rec. 24); Defendant Halverson, Applegate and McDonald's Joinder in Defendant Mellotte's

1 Motion to Dismiss (Ct. Rec. 28); Defendant Flying Y Home Owner's Association  
2 Joinder in Defendant Mellotte's Motion to Dismiss (Ct. Rec. 50); Defendant  
3 Robert A. Garretson Joinder in Motion to Dismiss (Ct. Rec. 55); Plaintiffs' Motion  
4 for Default Judgment (Ct. Rec. 27); Plaintiffs' Motion for Continuance (Ct. Rec.  
5 32); and Plaintiffs' Motion for Continuance (Ct. Rec. 37).

6 On August 23, 2007, Jetson R. Cheshier filed a complaint<sup>1</sup> in the Eastern  
7 District of Washington, asserting the following claims: Breach of Contract, Breach  
8 of Implied in Fact Contract, Breach of Implied Contract, Good Faith, and Fair  
9 Dealing, Promissory Estoppel, and Intentional Infliction of Emotional Upset.

#### 10 DISCUSSION

11 There are two pending Motions to Dismiss before the Court. Both motions  
12 are based on Rule 12(b) of the Federal Rules of Civil Procedure.

13 In reviewing a Fed. R. Civ. P. 12(b) motions, the Court accepts all  
14 allegations in the complaint as true and construes them in the light most favorable  
15 to the plaintiff. *Epstein v. Washington Energy Co.*, 83 F.3d 1136, 1140 (9<sup>th</sup> Cir.  
16 1999). A court may dismiss a complaint only if it is clear that no relief could be  
17 granted under any set of facts that could be proved consistent with the allegations.

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18 <sup>1</sup>The complaint was signed by Jetson Cheshier. None of the other listed  
19 Plaintiffs signed the complaint. Jetson Cheshier also filed a Response to Summary  
20 Judgment (Ct. Rec. 25, 26), Motions to Continue (Ct. Rec. 32, 37), and a Motion  
21 for Default Judgment (Ct. Rec. 27). These documents are signed only by Jetson  
22 Cheshier. Pursuant to 28 U.S.C. § 1654, parties may represent their own cause.  
23 Although a non-attorney may appear *pro se* on behalf of himself, he has no  
24 authority to appear as an attorney for others. *C.E. Pope Equity Trust v. United*  
25 *States*, 818 F.2d 696, 697 (9<sup>th</sup> Cir. 1987). Jetson Cheshier is not a member of the  
26 Washington State Bar. On October 15, 2007, Stanley Lippman filed a notice of  
27 appearance on behalf of all plaintiffs on October 15, 2007. *Id.* Mr. Lippman has  
28 not filed any amended or additional documents with the Court.

1 *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

2 **1. Defendants Mellottes' Motion to Dismiss Pursuant to Federal Rules of**  
 3 **Civil Procedure 12(b)(1-7)**

4 The Mellotte Defendants assert that Plaintiffs' claims asserted against it  
 5 should be dismissed for lack of subject matter jurisdiction.

6 Federal courts are courts of limited jurisdiction. *Mendoza v. Zirkle Fruit*  
 7 *Co.*, 301 F.3d 1163, 1174 (9<sup>th</sup> Cir. 2002). As such, federal courts are empowered  
 8 to hear only those cases that are within the judicial power of the United States as  
 9 defined by the United States Constitution, and those cases that have been  
 10 authorized by Congress. *Estate of Branson v. Commissioner of Internal Revenue*,  
 11 264 F.3d 904, 908 (9<sup>th</sup> Cir. 2001).

12 In this case, Plaintiffs have asserted five claims against all of the  
 13 Defendants: Breach of Contract, Breach of Implied in Fact Contract, Breach of  
 14 Implied Contract, Good Faith, and Fair Dealing, Promissary Estoppel, and  
 15 Intentional Infliction of Emotional Upset. None of these claims are based on  
 16 federal law. Plaintiffs have not alleged federal jurisdiction based on diversity.  
 17 Even though Plaintiffs have referred to the Fifth and Fourteenth Amendments to  
 18 the United States Constitution in their complaint, they have failed to allege any  
 19 facts that would support such a claim. As such, this Court is without jurisdiction to  
 20 hear these claims.

21 **2. Defendant State of Washington Department of Fish and Wildlife's Fed.**  
 22 **R. Civ. P. 12(b)(6) Motion to Dismiss**

23 The State of Washington asserts that Plaintiffs' claims asserted against it  
 24 should be dismissed for lack of subject matter jurisdiction.

25 For the same reasons as stated above, Plaintiffs have failed to allege a claim  
 26 upon which federal subject matter jurisdiction can be based. Moreover, the  
 27 Eleventh Amendment to the United States Constitution bars Plaintiffs' claims  
 28 against the State of Washington. *Seminole Tribe of Florida v. Florida*, 517 U.S.

44, 54-55 (1996). Plaintiffs have not alleged any of the exceptions that would abrogate the State of Washington's sovereign immunity in the above-captioned matter. Accordingly, the Court is without jurisdiction to hear these claims.

### 3. Plaintiffs' Motion for Default Judgment

Plaintiffs filed a Motion for Default Judgment on October 2, 2007 (Ct. Rec. 27). Because this Court lacks jurisdiction over Plaintiffs' claims, it is without authority to enter judgment against any of the Defendants.

### 4. Plaintiffs' Motion for Continuance

Plaintiffs filed a Motion for Continuance on October 9, 2007 (Ct. Rec. 32) and again on October 12, 2007 (Ct. Rec. 37). The Court has reviewed the Motion for Continuance and Declaration of Jetson R. Cheshire (Ct. Rec. 32, 37) and does not find that good cause exists to grant the motions. Plaintiff filed a Response to Summary Judgment on October 1, 2007 and has had adequate time to prepare his defense. Moreover, the Court finds above that it lacks subject matter jurisdiction over Plaintiffs' claims, a defect that cannot be cured by a continuance.

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendants' Theodore and Eloise Mellotte's Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1-7) (Ct. Rec. 9) is **GRANTED**. Defendants Theodore and Eloise Mellotte are **dismissed** from the above-cause of action.

2. The State Defendants' Fed. R. Civ. P. 12(b)(6) Motion to Dismiss (Ct. Rec. 16) is **GRANTED**. The State of Washington and the Department of Wildlife are **dismissed** from the above-captioned cause of action.

3. The Yakima County Defendants' Joinder in Motion to Dismiss (Ct. Rec. 24) is **GRANTED**. Defendant Yakima County and Stephen Brown are **dismissed** from the above-captioned cause of action.

4. Defendants Halverson, Applegate and McDonald's Joinder in Defendant Mellottes' Motion to Dismiss (Ct. Rec. 28) is **GRANTED**. Defendants Halverson,

1 Applegate and McDonald are **dismissed** from the above-captioned cause of action.

2 5. Defendant Flying Y Home Owner's Association Joinder in Defendant  
3 Mellotte's Motion to Dismiss (Ct. Rec. 50) is **GRANTED**. Defendant Flying Y  
4 Home Owner's Association is **dismissed** from the above-captioned cause of action.

5 6. Defendant Robert A. Garretson's Joinder in Motion to Dismiss (Ct. Rec.  
6 55) is **GRANTED**. Defendant Robert A. Garretson is **dismissed** from the above-  
7 captioned cause of action.

8 7. Plaintiffs' Motion for Default Judgment (Ct. Rec. 27) is **DENIED**.

9 8. Plaintiffs' Motion for Continuance (Ct. Rec. 32) is **DENIED**.

10 9. Plaintiffs' Motion for Continuance (Ct. Rec. 37) is **DENIED**.

11 10. The above-captioned case is **dismissed** with prejudice.

12 **IT IS SO ORDERED**. The District Court Executive is directed to enter this  
13 Order, forward copies to counsel and Plaintiffs, and close the file.

14 **DATED** this 30<sup>th</sup> day of November, 2007.

15 *s/ Robert H. Whaley*

16 ROBERT H. WHALEY  
17 Chief United States District Judge

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